

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-334 of 2015

Date	Order with signature of Judge
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Present: **Mr. Justice Muhammad Iqbal Kalhoro**
Mr. Justice Adnan ul Karim Memon

Abdul Latif Mooro & others..... Petitioners.
Vs.

Province of sindh & others Respondents.

Date of hearing: 16.02.2023.
Date of order: 28.02.2023.

Mr. Waqar Muhammad Khan Lodhi, advocate for the petitioners.
Mr. Noor ul Haq Qureshi, Advocate for respondents.
Mr. Abdul Jaleel Zubedi, AAG

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MUHAMMAD IQBAL KALHORO J: Petitioners are the Ex-employees of Sindh Agriculture Supply Organization (**SASO**), established under Sindh Agriculture Supply Organization Act, 1973 (**SASO Act, 1973**). SASO was dissolved with effect from 30.06.2001 vide notification dated 03.07.2001. Service of all the employees of SASO however was dispensed w.e.f 31.01.2004 pursuant to a Sindh Cabinet decision dated 20.01.2004. At the time of dissolution, the total number of employees in SASO was 710. In the year 1979-80 Pension/ Gratuity Fund was established by SASO management which was invested in some government authorized saving scheme for generating more funds.

2. After dissolution of SASO, employees filed a C.P.No.D-217/2000 before this court at Sukkur bench in which certain orders were passed. In compliance of which, golden handshake scheme (**GHS**) was introduced in which 100% commutation was allowed i.e. 40%

lump sum amount and 60% in the shape of monthly pension in addition to golden handshake amount. The finance department however instead of implementing the same got it modified from the Sindh Cabinet in its meeting held on 05.01.2005, whereby amount of commutation was though increased from 40 to 70%. But monthly pension was disallowed in addition to remaining portion of 30% commutation. Pursuant to which an agreement was drafted by Agriculture Department, which the Ex-members of SASO Employees Union signed on behalf of SASO employees so also representatives of Agriculture and Finance Department. The terms of which were notified vide notification dated 15. 3.2015 (Reproduced below).

3. It is the remaining 30% of commutation only, withheld as per decision of Sindh Cabinet and subsequent agreement executed between the representatives of the Employees Union SASO and the government, for the release of which, petitioners have filed instant petition on several grounds: that petitioner's rights are guaranteed under the Constitution; at the time of winding up of SASO, the petitioners were not absorbed in any government department nor were retired; on the contrary 30% commutation agreed to be given to the petitioners in compliance of this court's order in C.P.No.D-217/2000 has been withheld illegally; modification in the terms of GHS by Sindh Cabinet after the decision of this court in aforesaid petition is illegal and based on mala fide; and that the representatives of SASO Employees Union had no authority to sign agreement on behalf of all the SASO employees as after winding up of SASO in June 2001 and a notification dated 14.01.2004 — discharging the SASO employees -- the SASO Employees Union had ceased to exist.

4. During pendency of this petition, the other employees of SASO had filed applications u/o 1 rule 10 CPC (CMA 2099/1929 & others) seeking impleadment as petitioners in this petition, which were

allowed vide order dated 23.8.2021 and amended title of the petition was filed. At the time of hearing, not only advocate representing the main petitioners but counsel appearing on behalf of such applicants was also heard.

5. The respondents in their comments have stated that Sindh Cabinet had decided in the meeting dated 05.01.2005 that benefits of the scheme will be additional to the amount of 40% as worked out for commutation and other 30% commutation in lieu of monthly pension (total 70% of the amount as in the case of commutation) in lump sum and surrendering 30% of the gross pension to the Government of Sindh as earlier notified in the gazette notification dated 15.03.2004 to all the employees of SASO having service of 15 years and above. For the employees having service less than 15 years, gratuity at the rate of one month last drawn gross pay for each complete year of service shall be payable; that in pursuance of modification vide notification dated 03.02.2005, the golden handshake scheme for employees was circulated. Accordingly, payment of golden handshake scheme was released in favour of ex-employees of SASO, the notification and decision were implemented in the letter and spirit.

6. It may be clarified at the very outset that petitioners had also filed a C.P.No.D-172/2009 before this court claiming pension and other benefits which was allowed by this court vide judgment dated 02.09.2000. But it was set-aside by the Honorable Supreme Court in Civil Appeal No.28-K/2011 filed by province of Sindh vide judgment dated 08.08.2012. It is in this backdrop, the petitioners have sought following reliefs:-

- a) Declare that the so-called Memorandum of Agreement entered into between representatives of the Finance and Agriculture Departments and eight employees of SASO is illegal, unlawful and devoid of law.

- b) Pass orders for payment of 30% commutation to the petitioners which is retained illegally, unauthorizedly and unlawfully by the Respondents and has usurped the same under the garb of Memorandum of Agreement, including markup at the rate prevailing from time to time since February 2004 till date.
- c) Any other benefit this Honourable Court deems proper and necessary for the petitioners.

7. We have heard learned counsel for petitioners and interveners, who have pleaded the same facts and grounds as stated above and have prayed for allowing this petition. Learned Assistant A.G has opposed this petition. The ex-employees of SASO have been approaching this court by invoking constitutional jurisdiction for seeking multiple reliefs since SASO was dissolved in June 2001 and its employees were discharged finally on 31.01.2004. First petition (CPNo.D-217/2000) was filed by them before this court at Sukkar Bench which paved the way for introduction of GHS for them with certain benefits. It is not disputed that from that scheme, the petitioners gained benefit and were accordingly paid. The grievance of the petitioner yet is that initially 100% commutation was allowed i.e. 40% lump sum amount and 60% in the shape of monthly pension. Subsequently, in view of Sindh Cabinet's decision although commutation was increased to 70%, but 30% was withheld, and they are entitled to that remaining percentage of commutation. To buttress the case they have referred to documents available as annexures 'D, E, F' of the file. Annx. E and F are the copies of orders passed by this court in CPNo.D-217/2000. Annx. D, available at page 67 of the file, conveys a decision of the Cabinet that it has approved the package for SASO employees as given in para 4(b) and 4(c) of summary.

8. These paras in summary show that 3 basic pays for whole period of service for all grade employees was allowed plus pensionary benefits as per SASO rules. For employees having 25 years of service, 40% commutation and monthly pension out of remaining

60% commutation; and for employees having less than service of 15 years, gratuity for one month basic pay, including allowances, for each complete year. Item 4 (c) proposes that Government of Sindh may continue to disburse pension to retired employees of SASO, and that GHS may be allowed to SASO employees on the pattern adopted by Government of Punjab, Punjab Agriculture Development & Supply Corporation (Defunct) employees. The detail of such pattern has not however been outlined in the summary. But in any case, a perusal of said document demonstrates that it was not a final decision but was subject to further discussion and drawing minutiae about the subject. What came out to be notified however is as under:-

THE SINDH GOVERNMENT GAZETTE

Published by Authority

KARACHI, THURSDAY MARCH 18, 2004

PART-I

GOVERNMENT OF SINDH
AGRICULTURE, LIVE STOCK AND
FISHERIES DEPARTMENT
NOTIFICATION

Karachi, the 15TH March, 2004.

No.SO(A-IV)1(7)2003/SASO, In pursuance of the Sindh Cabinet's decision dated 02.04.2003, the functions of Sindh Agricultural Supplies Organization (SASO) shall stand closed and services of all employees of SASO stand dispensed with, with effect from 31.01.2004 (A.N) vide Services General Administration # Coordination Department, Government of Sindh, Karachi, Notification No.SO (C-IV)SGA&CD/7-882/03 dated 14.01.2004.

II

In pursuance of the Sindh Cabinet's decision dated 20.01.2004, orders dated 10.02.2004 of the Honourable High Court of Sindh Bench at Sukkur and with the approval of Competent Authority, the following Golden Handshake Scheme along with retirement benefits for all the employees of Sindh Agricultural Supplies Organization (SASO) (Defunct) is notified hereunder:

- a) Three last drawn basic pay (as on 31.01.2004) for each complete year of service for whole the period of service for all grade employees.
- b) Leave encashment of 180 days or less as per leave available.
- c) The benefits of the above scheme will be in addition to the normal termed benefits such as gratuity, commutation, monthly pension as per SASO rules.
- d) The service of 6 months and above shall be treated as 1 year while service of less than 6 months shall be ignored.
- e) Payment of benefits under Golden Handshake Scheme to all the employees shall be subject to deduction/adjustment of loan, advance etc.
- f) The determining date for the Golden Handshake Scheme will be 31.01.2004.
- g) The Finance Department, Government of Sindh will continue to disburse pension to all retired employees of SASO (defunct).

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SECRETARY AGRICULTURE

But before the terms of decision of the Cabinet and the above notification could be taken up for enforcement and actualization, the Cabinet held another meeting dated 05.01.2005. In this meeting,

the same terms as highlighted in earlier meeting 20.1.2004 and in the notification produced above were approved. However, an alternative proposal was made in respect of pension and other benefits including commutation, as it was noticed that preparation of documents for monthly pension were not possible for want of availability of service record and other particulars of employees. Accordingly a lump sum amount in the shape of GHS for employees of SASO was approved. And it was decided, after meeting with Finance Department and representatives of Employees Union SASO, that in lieu of monthly pension, half of the monthly pension i.e. 30% commutation may be encashed and paid in lump sum in the pattern of commutation and remaining half of the monthly pension i.e. 30% may be surrendered in favour of the government. In its stead a lump sum payment of Rs.118.103 million for GHS for employees was approved. This decision has been notified as under:-

THE SINDH GOVERNMENT GAZETTE
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KARACHI, WEDNESDAY FEBRUARY 9, 2005

PART-I

GOVERNMENT OF SINDH
AGRICULTURE DEPARTMENT
NOTIFICATION

Karachi, the 3rd February, 2005.

No.SO (A-IV) 1(7)2003/SASO___ In pursuance to (Sindh Cabinet's decision dated 05.01.2005, of para 2(c) of this Department's Notification No.SO (A-IV) 1-(7)2003/SASO dated 15.03.2004 is modified as under:-

“The benefits of the scheme will be in addition to the amount of 40% as worked out for commutation and another 30% commutation in lieu of monthly pension (totaling 70% of the amount as in the case of commutation) in lump sum and surrendering 30% of the gross pension to Government of Sindh, as earlier notified in the Gazette Notification on 15.03.2004 to all the employees of SASO (defunct) having service of 15 years and above. For the employees, having service less than 15 years Gratuity at the rate of one month last drawn gross pay for each complete year of service shall be payable”

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SECRETARY AGRICULTURE

Pursuant to this notification, memorandum of agreement dated 05.3.2005 was signed by representatives of SASO employees and Government of Sindh. This notification and agreement led to

disbursement of amount and its receiving by the petitioners accordingly without an apparent objection.

9. From above discussion, it is obvious that second meeting of the Sindh Cabinet on 05.01.2005 for resolving the issue of SASO employees qua their benefits in terms of GHS was neither in negation nor in derogation of its first meeting on 20.01.2004 but it was in continuation thereof. When it surfaced that it was practically impossible, due to non-availability of service record and other particulars of the petitioners, to prepare documents for monthly pension and other benefits, a lump sum amount substituting the pension plan was devised and approved in the shape of GHS. Thereby, it is was decided after consultation with Finance Department and representative of Employees Union SASO, that in lieu of monthly pension, half of the monthly pension i.e. 30% commutation would be encashed and paid in lump sum in the pattern of commutation and remaining half of the monthly pension i.e. 30% would be surrendered in favour of the government for generating an amount of Rs.118.103 million to be earmarked for GHS. We do not find the justification for supplanting original idea endorsed in the first meeting regarding GHS with the subsequent understanding as arbitrary or perverse or illegal or arising out of wilful thinking of the legislators. The subsequent policy came by only because of logistical glitches – non-availability of service record of the petitioners to enforce monthly pension scheme -- which led to withholding of 30pc commutation and extending them a lump sum amount in the shape of GHS instead.

10. Further, at the time when subsequent arrangement was agreed and notified for implementation, none of the petitioners opposed it on any ground and rather accepted the amount of GHS without any exception. Some of the employees however filed various petitions including a CP.No.D-172/2009 before this court and asked

for pension and other benefits that were in fact granted to them vide decision 02.9.2010. But in appeal No.28-K/2011 the Honorable Supreme Court set aside the said order and observed as under:-

“8. In our opinion the words “Golden Handshake Scheme” have now been commonly understood as a scheme whereby the employees relationship with the employer is severed for all time to come based upon the payment of a lump sum amount to them. In the present case it is not disputed before us that the Respondents did receive the lump sum amount to their satisfaction in the year 2005 as per the second Notification dated 03.02.2005. It is also an admitted fact that the amount of GHS was increased by virtue of second Notification. In this view of the matter in our opinion it does not lie in the mouth of the respondents to agitate that they were forced to abide by the GHS particularly when they did so voluntarily. No doubt the pension fund has been established by SASO and some of the pensioners are being paid from it but it does not mean that the benefit should be given to the Respondents who have accepted full and final settlement under the GHS.

9. In view of the foregoing circumstances we find that the Learned Sindh High Court fell into error while determining the rights of the Respondents in terms only of the earlier Notification dated 15.03.2004. Consequently this Appeal is allowed and the impugned Judgment is set-aside with the further observation that the salaries of the Respondents shall be paid up to the date of the receipt of their GHS payment cheques.”

11. We may remind here that in the order in CP.No.D-172/2009, this court not only granted pension but other benefits (which necessarily include commutation) also to the employees in accordance with the rules of SASO in addition to benefits under GHS. But the Honorable Supreme Court set aside the order in *toto* meaning thereby that SASO employees, after accepting the amount of GHS, were not held entitled to any relief including commutation. This being the position, coupled with the above discussion, we do not find any merit in this petition and accordingly dismiss it along with pending applications with no order as to costs.

JUDGE

JUDGE

A.K.